

COUNTY OF BERRIEN
OFFICE OF THE PROSECUTING ATTORNEY

Arthur J. Cotter
Prosecuting Attorney

Michael J. Sepic
Chief Assistant Prosecutor

Jennifer L. Smith
Chief Trial Attorney



Berrien County Courthouse
811 Port Street
St. Joseph, MI 49085

(269) 983-7111, ext. 8311
(269) 983-5757 FAX

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Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2011-10
Comment on proposed amendment to MCR 7.118

Dear Court Clerk:

I am writing to strongly oppose the proposed amendment to MCR 7.118, which would require county taxpayers to pay for a second publicly financed attorney to argue in support of upholding parole decisions of the Michigan Parole Board when there is already an assistant attorney general essentially arguing the inmate's case through their defense of the parole board's release decision.

The Berrien County Prosecutor's Office has appealed five parole release decisions since 2009, including three inmates convicted of 2nd degree murder, a child rapist, and an inmate convicted of attempting to murder his ex-girlfriend by slitting her throat. In each of these cases, the Attorney General's office intervened on behalf of the Michigan Parole Board arguing in support of upholding the board's release decisions. Given the intervention of the Attorney General's office, and because there is no constitutional, statutory, or court rule mandated right to an attorney for the inmate at taxpayer's expense in these civil appeals of an administrative agency's order, my office objected to the appointment of free counsel for these inmates. Over objection, the trial court nonetheless granted counsel to these inmates at public expense.

On behalf of the taxpayers of Berrien County, my office appealed the unwarranted and unnecessary expenditure of their money to provide these inmates with free attorneys. In People v. Ronald Wynn Hill, Court of Appeals No. 301364, Lower Court No. 2010-0312-AP, which is currently pending before the Michigan Court of Appeals, the Berrien County Prosecutor's Office appealed the appointment of a free attorney for 2nd degree murderer Ronald Wynn Hill. Although the trial judge in Mr. Hill's case did not find that he was entitled to the appointment of counsel based on any constitutional, statutory or court rule mandated requirement, the trial court relied instead on its "inherent authority" to appoint counsel at public expense if it felt that it was "reasonable and necessary" to do so. Given that there was already an assistant attorney general essentially briefing and arguing the inmate's position vis-à-vis defending the parole board's decision, the court's argument that it was "reasonable and necessary" to spend the taxpayer's money to appoint a second attorney for the inmate is dubious at best. Unfortunately, the Court of Appeals has not issued an opinion in the Hill case as of yet, and the submission deadline for comments concerning this proposed change to MCR 7.118 has now arrived.

Berrien County's experience in the five parole appeals we have pursued has demonstrated the diligence and professionalism of the Attorney General's office in defense of their client's (the Parole Board's) decision, and by extension, the position of the inmate seeking to uphold the parole release. They have prevailed in upholding the decision to parole inmates in three of the five parole appeals this office has instituted. Conversely, Berrien County's experience with the appointed counsel for the inmates has been that they do little but concur in their briefs and oral arguments with the position espoused by the assistant attorney general. The expenditure of taxpayers' money has done little to assist the court in insuring a full and fair hearing on the matter and is not justified.

As the Berrien County Prosecutor's Office has asserted in the People v. Ronald Wynn Hill case, and for that matter the trial judge in Hill essentially conceded, there is no constitutional, statutory or current court rule mandated requirement necessitating the appointment of a second publicly paid attorney to argue for the release of these inmates. The proposed court rule would change that fact through judicial activism, committing the unwarranted expenditure of taxpayers' hard-earned dollars. Such a decision to spend taxpayers' money, unless mandated by a constitutional requirement, is more appropriately left to the legislature and they have not taken action to amend the statute to require such an appointment. If the court nonetheless feels compelled to act on this issue, for the sake of county taxpayers' pocketbooks, I urge the court to at least limit the consideration of the appointment of free counsel to those rare circumstances where the Attorney General's office has not intervened in defense of the parole board's release decision. Only then can any credible argument be made that granting a free attorney at public expense to an inmate is "reasonable and necessary" to a full and fair hearing on one of these contested parole appeals.

Sincerely,

Arthur J. Cotter
Berrien County Prosecuting Attorney